of the licensee's expenditure of money upon the faith of the license that the licensor will, because of the hardship of the case, not be allowed to revoke, that a court of equity is not without power to grant relief where it is necessary for the licensor to come into court to establish the revocation. On the ground that he who comes into equity must do equity the licensor in such a case may be compelled to allow the licensee to remove fixtures placed upon the land, or that being impracticable, he may be required to make just compensation therefor.[19]

CONTRIBUTION AS BETWEEN JOINT TORT-FEASORS.—The rule is general and well established that one who has been forced to answer in damages for the full consequences of a wrong, for which others were equally liable, cannot exact contribution from his co-delinquents. This rule rests in the main upon two grounds. In the first place, one will not be permitted to found his cause of action upon his own misconduct. Contribution rests upon an equitable basis, and no equities can have their source in a breach of the law. He who contemns the law has placed himself so far beyond its pale that its machinery will not be set in motion to give him even partial relief from the consequences of his culpability. In the second place, the denial of contribution in such cases is believed to subserve the policy of the law in that it intimidates and deters potential tort-feasors by making each liable for the entire joint wrong and leaving the incidence of the burden to the election of the aggrieved party.

But, though the rule that there can be no contribution among joint wrong-doers has become well settled and inveterate, there are many exceptions to it. These exceptions are of such frequent occurrence that one writer has been led to make the statement that they have displaced the co-called "general rule" and that the latter is but an exception to the rule constituted by them.[1] A review of the cases bearing upon this subject indicates that the doctrine that joint tort-feasors cannot enforce contribution is departed from to a greater or less extent in the following instances:

(1) Where one is an active participant in the commission of a tort but is innocent of any evil intent. The overwhelming weight of authority is to the effect that, where there is no intentional nor deliberate violation of the law, and where the act is of such a nature that consciousness of wrong-doing is not necessarily presumed, then contribution will not be denied.[2] Under this head would be placed those cases of torts or injuries arising from mistakes, accidents, or involuntary ommissions in the discharge of official duty, acts that

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[19] Flick *v.* Bell, 110 Cal. xvii, 42 Pac. 813.

[1] Theodore W. Reath, in 12 HARV. LAW REV. 177.

[2] Thweatt *v.* Jones, 1 Rand. (Va.), 328, 10 Am. Dec. 538; Pennsylvania Steel Co. *v.* Washington & Berkeley Bridge Co., 194 Fed. 1011; Buskirk *v.* Sanders, 70 W. Va. 363, 73 S. E. 937; Jacobs *v.* Pollard, 64 Mass. 287, 57 Am. Dec. 105.

are not *malum in se*.[3] Further illustrations of this exception are where two or more creditors, acting in good faith, become jointly liable in trespass for the wrongful attachment of property,[4] and where an agent without evil intent, actual or constructive, commits a wrong while acting in accordance with the directions of his principal.[5] In the last two cases the courts are practically unanimous in granting contribution.

(2) Where one is not primarily liable but is a mere technical wrong-doer, the liability being imposed because of some relation existing between the parties or through mere inference of law.[6] Where a master is made to respond in damages for the negligence of a servant and a principal for that of an agent are cases coming within this category.[7] The principle is further illustrated by instances where the law imposes an absolute liability based upon an imperative duty, as where a city is made responsible for injuries caused by any obstructions placed in its streets,[8] or where a railroad is required at its peril to keep the means of ingress and egress to and from its station free from all obstacles that might cause injury to its passengers.[9]

(3) Where one, though not entirely guiltless, does not stand *in pari delicto* with his co-delinquents. The doctrine involved in this exception must be applied, however, with extreme caution, for no court will indulge in hair-splitting distinctions to determine which of the wrong-doers were most in fault. There is a marked tendency to confine the exception to instances where there is considerable disparity between the culpability of the offenders, as where the act committed by the one claiming contribution is merely *malum prohibitum* or a delinquency unattainted with moral turpitude,[10] or where his liability arose from the fact that he did nothing more than create a condition which required the active negligence of others to bring about the injury, such negligence being alone the proximate

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[3] Thweatt *v.* Jones, *supra.*

[4] First Nat. Bank *v.* Avery Planter Co., 69 Neb. 329, 95 N. W. 622; Vandiver *v.* Pollak, 97 Ala. 467, 12 So. 473; Farwell *v.* Becker, 129 Ill. 261, 21 N. E. 792, 16 Am. St. Rep. 267, 6 L. R. A. 400; Chester *v.* Gauss, 37 Mo. 518; Vandiver *v.* Pollok, 107 Ala. 547, 19 So. 180, 54 Am. St. Rep. 118.

[5] Moore *v.* Appleton, 26 Ala. 633.

[6] Bailey *v.* Bussing, 28 Conn. 455.

[7] Georgia Southern, etc., Ry. Co. *v.* Jossey, 105 Ga. 271, 31 S. E. 179; Smith *v.* Foran, 43 Conn. 244, 21 Am. Rep. 647; Gaffner *v.* Johnson, 39 Wash. 437, 81 Pac. 859.

[8] Campbell *v.* Somerville, 114 Mass. 334; City of Raleigh *v.* North Carolina Ry. Co., 129 N. C. 265, 40 S. E. 2; Gridley *v.* Bloomington, 68 Ill. 47.

[9] Old Colony Ry. Co. *v.* Slavens, 148 Mass. 363, 19 N. E. 372.

[10] Chesapeake & Ohio Canal Co. *v.* Allegheny County Com'rs, 57 Md. 201, 40 Am. Rep. 430; Penn. Steel Co. *v.* Washington & Berkeley Bridge Co., *supra;* Westfield Gas & Milling Co. *v.* Noblesville, etc., Co., 13 Ind. App. 481, 41 N. E. 955; Gray *v.* Boston Gas Light Co., 114 Mass. 149, 19 Am. Rep. 324.

cause of the injury.[11] But, where the plaintiff's tort was in any way deliberate, willful, malicious, intentional, unlawful, or immoral, then no court would inquire into the relative delinquency of the parties and the doctrine has no application.

(4) Where, though both parties are legally culpable, the ground of liability consists of mere negligence on their part while engaged in a lawful undertaking. The law bearing on this point is in a very unsettled state and the cases are not at all harmonious. The better view would seem to deny contribution.[12] This is especially true in the case of common carriers with respect to personal injuries resulting from collisions.[13] In the recent case of *City of Louisville* v. *Louisville Ry. Co.* (Ky.), 160 S. W. 771, it was held that the plaintiff could not enforce contribution from the defendant toward the payment of damages for an injury caused jointly by the disrepair of the former's streets and the negligence of the defendant. A number of courts, however, have held otherwise, and there are a good many *dicta* to the same effect.[14] But, of course, where the negligence was so gross as to raise a presumption of wrongful intent or reckless disregard for the welfare of others, the courts will not lend their aid to equalize the burden.

It is to be noted that, as regards many of the above exceptions to the general rule, there can be not only contribution but full indemnity. The cases where indemnity and not merely contribution can be demanded are too obvious to need special mention.

Attempts have been made to formulate a rule by means of which to determine whether or not contribution should be permitted in any particular case. In some jurisdictions the test adopted is the plaintiff's consciousness of wrong-doing,[15] but this is thought to be too broad. The criterion enjoying a preponderance of favor is to the effect that contribution must be limited to those instances in which the circumstances do not necessitate a presumption that the plaintiff knew that he was committing an unlawful act.[16]

The cases decided during the last several decades show a slight

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[11] Kampman *v.* Rothwell, 101 Tex. 535, 109 S. W. 1089; City of Brooklyn *v.* Brooklyn City Ry. Co., 47 N. Y. 475.

[12] Union Stockyards Co. *v.* C. B. & Q. R. Co., 196 U. S. 217, 25 Sup. Ct. 226; Walton *v.* Miller, 109 Va. 210, 63 S. E. 458; Spaulding *v.* Oakes, 42 Vt. 343; Consolidated Kansas City Smelting & Refining Co. *v.* Brickley, 45 Tex. Civ. App. 100, 99 S. W. 181; Central of Ga. Ry. Co. *v.* Macon Ry. & Light Co., 9 Ga. App. 628, 71 S. E. 1076.

[13] Missouri, K. & T. Co. *v.* Vance (Tex.), 41 S. W. 167; Northern Texas Traction Co. *v.* Caldwell, 44 Tex. Civ. App. 374, 99 S. W. 869.

[14] Mayberry *v.* Northern Pac. Ry. Co., 100 Minn. 79, 110 N. W. 356; Eaton & Prince Co. *v.* Miss. Valley Trust Co., 123 Mo. App. 117, 100 S. W. 551; Ankeny *v.* Moffett, 37 Minn. 109, 33 N. W. 320; Armstrong County *v.* Clarion Co., 66 Pa. St. 218, 5 Am. Rep. 368.

[15] Farwell *v.* Becker, *supra;* Ives *v.* Jones, 3 Ired. L. 538, 40 Am. Dec. 421; Acheson *v.* Miller, 2 Ohio St. 203, 59 Am. Dec. 663.

[16] Jacobs *v.* Pollard, *supra;* Torpy *v.* Johnson, 43 Neb. 882, 62 N. W. 253; Ankeny *v.* Moffett, *supra;* Bailey *v.* Bussing, *supra.*

tendency to mitigate somewhat the rigor of the rule against contribution. It would seem that this has been due to a great extent to the development of the law of torts and the very considerable enlargement of its scope. The word "tort," at first of rather restricted application, has come of late to include many wrongs involving but a slight tincture of moral delinquency that were previously remediless.[17]

JOINT AND SEVERAL LIABILITY OF JOINT TORT-FEASORS FOR NEGLIGENT INJURIES.—While it is true, as stated by an eminent writer on the subject of torts,[1] that no comprehensive general rule can be formulated which will harmonize all the authorities as to what constitutes a joint liability among tort-feasors for negligent injuries, a review and classification of the cases on the subject reveals the fact that the seeming conflict of opinion is far more apparent than real. This question can be considered most conveniently under four separate heads.

1. Persons who act separately and independently, each causing a separate and distinct injury, cannot be sued jointly, even though the injuries may have been precisely similar in character and inflicted at the same time.[2] A joint tort is essential to the maintenance of a joint action.[3] For entirely separate and distinct wrongs in no wise connected, actually or impliedly, it is undenied that wrongdoers are liable only in separate actions.[4]

2. When two or more persons owe to another a common duty, which each wongfully neglects to perform, then, although the negligence of each was without concert, if such several neglects concurred in causing the injury, there is a joint tort with a joint and several liability.[5] Likewise where the negligent acts of several persons engaged in a common undertaking results in injury to some third party, they are jointly and severally liable, and this although the specific injury was done by one of the parties alone.[6] Here the liability is founded upon the concert of action. *A fortiori*, where there is unity

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[17] Palmer *v.* Wick & Pulteneytown Steam Shipping Co., [1894] A. C. 318.

[1] COOLEY, TORTS, 92-95.

[2] Powell *v.* Thompson, 80 Ala. 51; Miller *v.* Highland Ditch Co., 87 Cal. 430, 25 Pac. 550.

[3] Williams *v.* Sheldon, 10 Wend. (N. Y.) 654; Millard *v.* Miller, 39 Colo. 103, 88 Pac. 845.

[4] Boyd *v.* Philadelphia Ins. Patrol, 113 Pa. St. 269, 6 Atl. 536; Livesay *v.* Denver First National Bank, 36 Colo. 526, 86 Pac. 102, 6 L. R. A. (N. S.) 598; Howard *v.* Union Traction Co., 195 Pa. St. 391, 45 Atl. 1076.

[5] Economy Light, etc., Co. *v.* Hiller, 203 Ill. 518, 68 N. E. 72.

[6] Central of Georgia Ry. Co. *v.* Brown, 113 Ga. 414, 38 S. E. 989, 84 Am. St. Rep. 250; Hawkesworth *v.* Thompson, 98 Mass. 77, 93 Am. Dec. 137.